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IN REPLY  
REFER TO

MMP  
PROCLTR 97- 26

SEP 16 1997

MEMORANDUM FOR PROCLTR DISTRIBUTION LIST

SUBJECT: Application of Special Simplified Procedures to Certain Commercial Items  
(FAR Case 96-307/FAC 90-45, Item VII)

This PROCLTR provides a final rule amending the Federal Acquisition Regulation to implement section 4202 of the Clinger-Cohen Act of 1996, Public Law 104-106 (Attachment 1) and supplementary DLAD coverage (Attachment 2). Section 4202 authorized the use of special simplified procedures for acquisitions of supplies and services in amounts greater than the simplified acquisition threshold (\$100,000) but not greater than \$5,000,000, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that quotes or offers will include only commercial items. FAR Subpart 13.6, Test Program for Certain Commercial Items, implements this section and took effect on January 1, 1997. The authority expires on January 1, 2000.

The principal advantage of the Subpart 13.6 authority is that it relieves contracting officers from the procedural formalities that formerly would have applied under Subpart 15.6. Contracting officers are encouraged to use innovative approaches and can combine any appropriate procedures from parts 12, 13, 14, and 15 (see FAR 12.103(j)). FAR Part 13 provides contracting officers with substantial latitude to determine an optimum acquisition strategy, as long as the evaluation of quotations or offers is made on the basis established in the solicitation (see FAR 13.106-2(a)(10) and 13.106-2(b)(1)).

DLAD 13.601(90) clarifies that acquisitions under Subpart 13.6 *cannot* be conducted in the same manner as those that were formerly called "small purchases," which did not exceed \$25,000 and therefore were never subject to synopsis requirements. (Pursuant to the Federal Acquisition Streamlining Act (FASA) of 1994, the term "small purchases" no longer exists. Instead, Part 13 provides the authority to conduct "simplified acquisitions" up to the "simplified acquisition threshold" (\$100,000).) Synopsis requirements are *not* waived for acquisitions conducted under Part 13 (including Subpart 13.6), and all quotations or offers must be considered (see FAR 5.101(a)(1) and 13.106-2(b)(1)).

The DLAD coverage clarifies several other portions of the new coverage, such as --

a. Circumstances when the contracting officer may reasonably expect that quotes or offers will include only commercial items (DLAD 13.601(a)(90)).

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b. Contracting requirements that apply to purchase orders and blanket purchase agreement (BPA) calls in amounts greater than the simplified acquisition threshold, and cautions about BPA calls (DLAD 13.601(a)(91)).

c. Procedures in Part 13 that are limited to the simplified acquisition threshold or some lower threshold and are therefore not authorized for use under Subpart 13.6 (DLAD 13.601(a)(92)).

d. Applicability of procedures and exemptions authorized in other parts of the FAR (DLAD 13.601(c)).

e. Circumstances when a justification and approval is required (DLAD 13.602(a)).

f. Requirements of the North American Free Trade Agreement (NAFTA) and the Trade Agreements Act (TAA) relative to synopsis publication and solicitation response time.

Note that changes at FAR 11.002(a)(1)(ii) and 11.104(a) replace the term "minimum needs" with "agency needs." The term "minimum" does not appear in the Competition in Contracting Act but was added to the FAR implementation to emphasize that the Government is only authorized to acquire its legitimate requirements. Unfortunately, it has created the erroneous impression that the Government is precluded from describing its needs in a manner that takes optimum advantage of capabilities in the marketplace. The "minimum doctrine" has traditionally been considered the basis for the concept that the Government should be buying only what it needs and not what it wants or desires, thereby reminding contracting officers that they must always be able to provide justifications for agency requirements. However, this "policing" role has all too frequently put the contracting officer in the position of second-guessing legitimate user requirements, because in the contracting officer's opinion there were other items available that were "good enough." What contracting officers should be doing is helping users identify appropriate trade-offs that should be made, based on market capabilities, price, and other relevant information.

The DD Form 350, *Individual Contracting Action Report*, has been revised to provide a new block that will be used to identify (i) simplified acquisitions conducted under FAR Subpart 13.6 and (ii) simplified acquisitions not conducted under FAR Subpart 13.6. No additional requirements for reporting test results have yet been implemented, and further guidance will follow.

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This PROCLTR expires upon incorporation of the coverage at Attachment 2 into the DLAD, but in any event not later than one year after the date of issue. Questions may be directed to Anne Burleigh, MMPPP, (703) 767-1358, DSN 427-1358, [anne\\_burleigh@hq.dla.mil](mailto:anne_burleigh@hq.dla.mil).

Attachments



**ROBERT L. MOLINO**  
Executive Director  
(Procurement)

[Federal Register: January 2, 1997 (Volume 61, Number 1)]  
[Rules and Regulations]  
[Page 262-266]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]

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DEPARTMENT OF DEFENSE  
48 CFR Parts 5, 6, 11, 12 and 13  
[FAC 90-45; FAR Case 96-307; Item VII]  
RIN 9000-AH2C

Federal Acquisition Regulation; Application of Special Simplified  
Procedures to Certain Commercial Items

AGENCIES: Department of Defense (DOD), General Services Administration  
(GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

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SUMMARY: The Civilian Agency Acquisition Council and the Defense  
Acquisition Regulations Council have agreed on a final rule to amend  
the Federal Acquisition Regulation (FAR) to implement Section 4202 of  
the Clinger-Cohen Act of 1996 (Public Law 104-106). Section 4202  
requires revisions to the FAR to incorporate special simplified  
procedures for the acquisition of certain commercial items with a value  
greater than the simplified acquisition threshold (\$100,000) but not  
greater than \$5 million. The purpose of this revision is to vest  
contracting officers with additional procedural discretion, so that  
commercial item acquisitions in this dollar range may be solicited,  
offered, evaluated, and awarded in a simplified manner that maximizes  
efficiency and economy and minimizes burden and administrative costs  
for both the Government and industry. This regulatory action was not  
subject to Office of Management and Budget review under Executive Order  
12866, dated September 30, 1993. This is not a major rule under 5  
U.S.C. 804.

EFFECTIVE DATE: January 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss at (202) 501-4764 in  
reference to this FAR case. For general information, contact the FAR  
Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-  
4755. Please cite FAC 90-45, FAR case 96-307.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to  
implement section 4202 of the Clinger-Cohen Act of 1996 (Public Law  
104-106). Section 4202 authorizes special simplified procedures for  
acquisitions of commercial items at amounts greater than the simplified  
acquisition threshold (\$100,000) but not greater than \$5 million, when  
the contracting officer reasonably expects, based on the nature of the  
commercial items sought and on market research, that offers will  
include only commercial items. The authority to use the special  
simplified procedures under this section expires on January 1, 2000.  
Section 4202 also amends 41 U.S.C. 416 to permit issuance of  
solicitations for commercial items in fewer than 15 days after the  
synopsis notice is published.

A proposed rule was published in the Federal Register on September  
6, 1996 (61 FR 47384). Twenty-four sources

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Attachment 1

submitted comments in response to the **proposed** rule. All comments were considered in the development of the final rule. Among other changes adopted in this final rule, the **proposed** language at 13.604-2, Alternative negotiation techniques, which introduced into the **FAR** an auctioning-like concept, has been removed from this final rule for further study and analysis under new **FAR** case 96-024.

#### B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because it is expected to increase the number of Federal contracts awarded using procedures that are familiar to small entities. A Final Regulatory Flexibility Analysis (FRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the **FAR** Secretariat. The analysis is summarized as follows: One public comment was received in response to the initial regulatory flexibility analysis. The respondent stated that the analysis did not indicate that regulatory alternatives were considered in the process of drafting the **proposed** rule, and that there was no estimated measure or quantification of small business impact or number and dollar value of Federal contracts likely to be affected. The final regulatory flexibility analysis contains a more complete description of the alternatives that were considered for the purpose of minimizing any adverse impact on small businesses and reflects data extrapolated from the Federal Procurement Data System which show that in fiscal year 1995, 73 percent of all purchases made under the procedures used in Part 13 were awarded to small businesses. As stated in the initial regulatory flexibility analysis, the Federal Procurement Data System is just beginning to track acquisitions of commercial items. Until more complete data are collected, it will be difficult to precisely estimate the number of small entities to which the rule will apply. The rule imposes no new reporting, recordkeeping, or other compliance requirements. We considered whether flexible compliance with this rule would be appropriate. Since the rule is expected to have a beneficial impact on industry, it was determined that flexible compliance would not be appropriate in this case. Instead, the rule is intended to apply to both small and large entities equally so that both may benefit. However, in developing the final rule, alternatives were considered, and revisions were made, to minimize possible economic impact on small entities. The language on alternative negotiation techniques has been removed from the rule pending further study and analysis. At the present time, this rule does not extend authority to use the special test procedures for construction. The **proposed** language included on construction, in Part 13, was not intended to address the applicability of the test procedures to construction and the language in the final rule has been amended to eliminate this ambiguity. The broader issue of the applicability of the **FAR's** commercial item policies to construction contracting is under review.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the **FAR** do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 5, 6, 11, 12 and 13

Government procurement.

Dated: December 24, 1996.  
Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 5, 6, 11, 12 and 13 are amended as set

forth below:

1. The authority citation for 48 CFR Parts 5, 6, 11, 12 and 13 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2301 to 2331; and 42 U.S.C. 2473(c).

#### PART 5--PUBLICIZING CONTRACT ACTIONS

2. Section 5.203 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

5.203 Publicizing and response time.

\* \* \* \* \*

(a) A notice of contract action shall be published in the Commerce Business Daily at least 15 days before issuance of a solicitation except when that, for acquisitions of commercial items, the contracting officer may--

(1) Establish a shorter period for issuance of the solicitation; or

(2) Use the combined CBD synopsis/solicitation procedure (see 12.603).

\* \* \* \* \*

(h) In addition to other requirements set forth in this section, for acquisitions subject to NAFTA or the Trade Agreements Act (see subpart 25.4), the period of time between publication of the synopsis notice and receipt of offers shall be no less than 40 days. However, if the acquisition falls within a general category identified in an annual forecast, the availability of which is published in the CBD, the contracting officer may reduce this time period to as few as 10 days.

3. Section 5.207 is amended by revising paragraph (e) (3) to read as follows:

5.207 Preparation and transmittal of synopses.

\* \* \* \* \*

(e) \* \* \*

(3) Except for contract actions equal to or less than the simplified acquisition threshold or acquisitions of commercial items, the synopsis shall refer to Numbered Note 22 for noncompetitive contract actions. If it is anticipated that award will be made via a delivery order to an existing basic ordering agreement, the synopsis shall so state.

\* \* \* \* \*

#### PART 6--COMPETITION REQUIREMENTS

4. Section 6.001(a) is revised to read as follows:

6.001 Applicability.

\* \* \* \* \*

(a) Contracts awarded using the simplified acquisition procedures of part 13 (but see 13.602 for requirements pertaining to sole source acquisitions of commercial items under subpart 13.6);

\* \* \* \* \*

#### PART 11--SUBSCRIBING AGENCY NEEDS

5. Section 11.002 is amended by revising paragraph (a) (1) (ii) and adding paragraph (e) to read as follows:

11.002 Policy.

(a) \* \* \*

(1) \* \* \*

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

\* \* \* \* \*

(e) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.

6. Section 11.104 is amended by revising paragraph (a) to read as follows:

11.104 Items peculiar to one manufacturer.

\* \* \* \* \*

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(a) The particular brand-name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's ~~minimum~~ needs; and

*corrected in FAC 90-45*

\* \* \* \* \*

#### PART 12--ACQUISITION OF COMMERCIAL ITEMS

7. Section 12.202 is amended by revising paragraph (b) to read as follows:

12.202 Market research and description of agency need.

\* \* \* \* \*

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the type of product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.

\* \* \* \* \*

8. Section 12.203 is amended by adding a sentence to the end of the paragraph to read as follows:

12.203 Procedures for solicitation, evaluation, and award.

\* \* \* For acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$5,000,000, including options, contracting activities shall employ the simplified procedures authorized by subpart 13.6 to the maximum extent practicable.

9. Section 12.204 is revised to read as follows:

12.204 Solicitation/contract form.

(a) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, if (1) the acquisition is expected to exceed the simplified acquisition threshold; (2) a paper solicitation or contract is being issued; and (3) procedures at 12.603 are not being used. Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.

(b) Consistent with the requirements at 5.203 (a) and (h), the contracting officer may allow fewer than 15 days before issuance of the

solicitation.

10. Section 12.205 is amended by revising paragraph (c) to read as follows:

12.205 Offers.

\* \* \* \* \*

(c) Consistent with the requirements at 5.203 (b) and (h), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items.

11. Section 12.213 is revised to read as follows:

12.213 Other commercial practices.

It is a common practice in the commercial marketplace for both the buyer and seller to propose terms and conditions written from their particular perspectives. The terms and conditions prescribed in this part seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or Executive order.

12. Section 12.302(a) is revised to read as follows:

12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) General. The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at 52.212--1, Instructions to Offerors-Commercial Items, and the clause at 52.212--4, Contract Terms and Conditions- Commercial Items, to adapt to the market conditions for each acquisition.

\* \* \* \* \*

13. Section 12.602 is amended by revising paragraph (a) to read as follows:

12.602 Streamlined evaluation of offers.

(a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at 52.212-2, Evaluation--Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106-2 if the acquisition is being made using simplified acquisition procedures. When the provision at 52.212-2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, when using the simplified acquisition procedures in part 13, contracting officers are not required to describe the relative importance of evaluation factors.

\* \* \* \* \*

14. Section 12.603 is amended by revising paragraph (c) (3) (ii) to read as follows:

12.603 Streamlined solicitation for commercial items.

\* \* \* \* \*



(c) \* \* \*  
(3) \* \* \*  
(ii) When using the combined CBD synopsis/solicitation, contracting officers shall establish a response time in accordance with 5.203(b) (but see 5.203(h)).  
\* \* \* \* \*

#### PART 13--SIMPLIFIED ACQUISITION PROCEDURES

15. Section 13.000 is revised to read as follows:

##### 13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). Section 13.601 provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not greater than \$5,000,000, including options. See part 12, Acquisition of Commercial Items, for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See 36.602-5 for simplified procedures to be used when acquiring architect-engineering services.

16. Section 13.103 is amended by revising paragraphs (b), (c) and (j) to read as follows:

##### 13.103 Policy.

\* \* \* \* \*

(b) The contracting office shall not use simplified acquisition procedures for contract actions exceeding \$50,000 after December 31, 1999, unless the office's

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cognizant agency has certified full FACNET capability in accordance with 4.505-2. This limitation does not apply to acquisitions of commercial items conducted using subpart 13.6.

(c) Simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the simplified acquisition threshold (or \$5,000,000, including options, for acquisitions of commercial items using subpart 13.6), even though resulting awards do not exceed the applicable threshold. Requirements aggregating more than the simplified acquisition threshold (or \$5,000,000, including options, if using subpart 13.6) or the micro-purchase threshold shall not be broken down into several purchases that are less than the applicable threshold merely to permit use of simplified acquisition procedures, or to avoid any requirements that apply to purchases exceeding the micro-purchase threshold.

\* \* \* \* \*

(j) Contracting officers are encouraged to use innovative approaches in awarding contracts using the simplified acquisition procedures under the authority of this part. For acquisitions of other than commercial items not expected to exceed the simplified acquisition threshold, contracting officers may use any appropriate combination of the procedures in part 13, 14, 15, 35, or 36, including the use of Standard Form (SF) 1442, Solicitation, Offer and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)). For acquisitions of commercial items not expected to exceed \$5 million, contracting officers may use any appropriate combination of the procedures in parts 12, 13, 14 and 15 (see 13.103(c)).

\* \* \* \* \*

17. Section 13.104 is amended by revising paragraph (b) to read as follows:

##### 13.104 Procedures.

\* \* \* \* \*

(b) Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation and the award made on an "all-or none" or "multiple award" basis if suppliers are so advised when quotations or offers are requested.

\* \* \* \* \*

18. Section 13.106-2 is amended by revising paragraphs (a)(1) through (a)(3), (a)(4) introductory text, (a)(5), (a)(6), (b)(1), (b)(3), (c)(1), (c)(2), (d)(3) and (d)(4)(ii); redesignating (a)(6) through (8) as (a)(7) through (9), respectively; and by adding new (a)(6), and (a)(10) to read as follows:

**13.106-2 Purchases exceeding the micro-purchase threshold.**

(a) Soliciting competition. (1) Contracting officers shall promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality) including the administrative cost of the purchase. Contracting officers are encouraged to use best value. Solicitations shall notify suppliers of the basis upon which award is to be made.

(2) For acquisitions not exceeding the simplified acquisition threshold where FACNET is not available, or an exemption set forth in 4.506 applies, quotations may be solicited through other appropriate means (e.g., orally, or in writing). The contracting officer shall comply with the requirements of 5.101 when not soliciting via FACNET. When a synopsis is required, sufficient information to permit suppliers to develop quotations or offers may be incorporated into a combined synopsis/ solicitation. In such cases, the contracting officer is not required to issue a separate solicitation. For commercial item acquisitions, also see 12.603.

(3) For acquisitions not exceeding \$25,000, requests for quotations should be solicited orally to the maximum extent practicable when FACNET is not available or a written determination has been made that it is not practicable or cost-effective to purchase via FACNET. Paper solicitations for contract actions not expected to exceed \$25,000 should only be issued only when obtaining electronic or oral quotations is not considered economical or practicable. Written solicitations shall be issued for construction contracts over \$2,000.

(4) If a synopsis is not required (e.g., the acquisition does not exceed \$25,000 or an exemption to the synopsis requirement applies) and FACNET is not being used, solicitation of at least three sources generally may be considered to promote competition to the maximum extent practicable. In such circumstances, maximum practicable competition ordinarily can be obtained without soliciting quotations or offers from sources outside the local trade area. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations or offers. The following factors influence the number of quotations or offers required in connection with any particular purchase:

\* \* \* \* \*

(5) For purchases not exceeding the simplified acquisition threshold, Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available.

(6) For sole source acquisitions of commercial items in excess of the simplified acquisition threshold conducted pursuant to subpart 13.6, the requirements at 13.602(a) apply.

(7) Contracting officers shall not limit competition to suppliers of well-known and widely distributed makes or brands (see 11.104), or solicit quotations or offers on a personal preference basis.

\* \* \* \* \*

(10) Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) Evaluation of quotations or offers. (1) When evaluating

quotations or offers, the evaluation must be made on the basis established in the solicitation. All quotations or offers must be considered. However, the contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in parts 14 and 15 are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in part 14 or 15 may be used. Formal evaluation plans, establishment of a competitive range, conduct of discussions, and scoring of quotes or offers are not required. Contracting offices may conduct comparative evaluations of offers. Evaluation of other factors, such as past performance, does not require the creation or existence of a formal data base, but may be based on such information as the contracting officer's knowledge of and previous experience with the item or service being purchased, customer surveys, or other reasonable basis.

\* \* \* \* \*

(3) Contracting officers shall evaluate quotations or offers inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

\* \* \* \* \*

(c) Award. (1) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the

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quantities required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(2) For acquisitions not exceeding the simplified acquisition threshold, except for awards conducted through FACNET, notification to unsuccessful suppliers shall be given only if requested.

\* \* \* \* \*

(d) \* \* \*

(3) If only one source is solicited and the acquisition does not exceed the simplified acquisition threshold, an additional notation shall be made to explain the absence of competition, except for acquisition of utility services available only from one source.

(4) \* \* \*

(ii) Written solicitations (see 2.101). For acquisitions not exceeding the simplified acquisition threshold, written records of solicitations/offers may be limited to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

\* \* \* \* \*

19. Section 13.107 is amended by revising paragraph (a) to read as follows:

13.107 Solicitation forms.

(a) For use of the SF 1449, Solicitation/Contract/Order for Commercial Items, see 12.204.

\* \* \* \* \*

20. Section 13.202 is amended by revising paragraph (b) (2) to read as follows:

13.202 Establishment of blanket purchase agreements (BPAs).

\* \* \* \* \*

(b) \* \* \*

(2) Consider suppliers whose past performance has shown them to be dependable, and who offer quality supplies or services at consistently lower prices and who have provided numerous purchases at or below the simplified acquisition threshold.

\* \* \* \* \*

21. Section 13.204 is amended by revising paragraphs (a) and (b) to read as follows:

13.204 Purchases under blanket purchase agreements.

(a) The use of a BPA does not authorize purchases that are not otherwise authorized by law or regulation. For example, the BPA, being a method of simplifying the making of individual purchases, shall not be used to avoid the simplified acquisition threshold, or \$5,000,000 for acquisitions of commercial items conducted under subpart 13.6.

(b) Unless otherwise specified in agency regulations, individual purchases under BPAs, except those under BPAs established in accordance with 13.202(c)(3), shall not exceed the simplified acquisition threshold, or \$5,000,000, for acquisitions of commercial items conducted under subpart 13.6.

\* \* \* \* \*

22. Subpart 13.6, consisting of sections 13.601 and 13.602, is added to read as follows:

Subpart 13.6-Test Program for Certain Commercial Items

Sec.

13.601 General.

13.602 Special documentation requirements.

13.601 General.

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5,000,000, including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).

(b) For the period of this test, contracting activities shall employ the simplified procedures authorized by the test to the maximum extent practicable.

(c) When acquiring commercial items using the procedures in this part, the requirements of part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses at subpart 12.3.

(d) The authority to issue solicitations under this subpart shall expire on January 1, 2000. Contracts may be awarded after the expiration of this authority for solicitations issued before the expiration of the authority.

13.602 Special documentation requirements.

(a) Sole source acquisitions. Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in part 6. However, contracting officers shall not conduct sole source acquisitions, as defined in 6.003, under this subpart unless the need to do so is justified in writing and approved at the levels specified in paragraphs (a)(1) and (a)(2) of this section. Contracting officers shall prepare sole source justifications using the format at 6.303-2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act). Justifications and approvals are required under this subpart only for

sole source acquisitions.

(1) For a **proposed** contract exceeding \$100,000 but not exceeding \$500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in agency procedures.

(2) For a **proposed** contract exceeding \$500,000, the approval shall be by the competition advocate for the procuring activity, designated pursuant to 6.501; or an official described in 6.304 (a) (3) or (a) (4). This authority is not delegable.

(b) Contract file documentation. The contract file shall include--

(1) A brief written description of the procedures used in awarding the contract, including the fact that the test procedures in **FAR** 13.6 were used;

(2) The number of offers received;

(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and

(4) Any justification approved under paragraph (a) of this section.

[FR Doc. 96-33211 Filed 12-31-96; 8:45 am]

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PART 5

### PUBLICIZING CONTRACT ACTIONS

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PART 5

PUBLICIZING CONTRACT ACTIONS

SUBPART 5.2 - SYNOPSIS OF PROPOSED CONTRACT ACTIONS

5.202 Exceptions.

(a)(2) The requirements of FAR 5.202(a)(2) are satisfied upon execution of the justification (see FAR 6.302-2(c)(1)) or upon receipt by contracting personnel of the information described in 6.303-2(b). (The use of the exception to synopsisizing contained in FAR 5.202(a)(2) does not necessarily, in and of itself, preclude the use of full and open competition.)

5.203 Publicizing and response time.

(a)(2) Use of the combined synopsis/solicitation concept (see FAR Subpart 12.603) is not limited to acquisitions of commercial items (e.g., see FAR 13.106-2(a)(2)). If the information necessary to prepare an offer exceeds the 12,000-character space limitation of the synopsis format (see FAR 5.207(b)(4), Item 17, Description), the information can be incorporated by referencing a source (e.g., home page or other Internet site) where the information is available for viewing.

(h) The cognizant DLA contracting office, if it elects to take advantage of the authority at FAR 5.203(h), is responsible for identifying the general category or categories of items and publishing the forecast. If using a combined synopsis/solicitation for acquisitions subject to the North American Free Trade Agreement (NAFTA) or the Trade Agreements Act (TAA), a minimum response time of 10 days is required.

SUBPART 5.3 - SYNOPSIS OF CONTRACT AWARDS

5.303 Announcement of contract awards.

(a) Public announcement.

(90) Information on all proposed contract actions (see DFARS 205.303(a)(1)) of \$5 million or more shall be submitted on DLA Form 1693, Contract Announcement, to Headquarters DLA, Public Affairs Office, by facsimile ((703) 767-6187 or DSN 427-6187) at least 2 full working days prior to the date of award. All required approvals and funding must be obtained prior to submission. Changes, such as changes in the availability of funds, shall be forwarded to the Public Affairs Office to take appropriate action. Excluded from this requirement are mandatory orders placed with Federal Prison Industries, Inc. (FPI), the National Industries for the Blind (NIB) and the National Industries for the Severely Handicapped (NISH). The value of contract actions subject to announcement should not include the amount of any Government furnished property. Except for DFSC, each announcement must indicate the concurrence of the chief of the contracting office.

SUBPART 5.4 - RELEASE OF INFORMATION

5.401 General.

(b) See 7.304(c)(91) for treatment of requests for information relevant to commercial activities cost studies.

5.404 Release of long-range acquisition estimates.

5.404-1 Release procedures.

(a) Application. The authority at FAR 5.404-1(a) is delegated to Heads of contracting activities or their designees.

\* \* \* \* \*

**PART 7**

**ACQUISITION PLANNING**

**SUBPART 7.1 - ACQUISITION PLANS**

**7.102 Policy.**

(90) Market surveys (see FAR 7.101) and market research (see FAR and **DLAD PART 10**) shall be performed consistent with any local operating procedures.

(91) Written acquisition plans are required for all proposed contract actions other than those not expected to exceed the simplified acquisition threshold or those effected under Appendix A. Acquisition plans for proposed contract actions not required to be approved by the Acquisition Planning Executive Council (APEC) (see 7.104(90)) shall, at a minimum, be initiated at the time the purchase request is received by the buyer, prepared substantially in accordance with the illustrative format at 90.1102, and approved at a level above the level of the buyer. The approval level shall be established by the chief of the contracting office. The illustrative format may be modified to suit the needs of the contracting office. A standard DLA-wide form is not prescribed in order to permit development of local forms or formats.

(92) Acquisition plans for proposed contract actions required to be approved by the APEC shall be prepared in accordance with FAR 7.105, DFARS 207.105, and 90.1101 of this regulation, except as provided in 7.104-90(g) below in regard to DPSC.

(93) The acquisition plan shall accompany the justification for other than full and open competition (see FAR 6.303, FAR 6.304, and 6.101 and 6.304 of this regulation) when it is forwarded to the Activity Competition Advocate. The Activity Competition Advocate shall also be provided a copy of the acquisition plan for those acquisitions for which there is not a history of receipt of more than one offer and price competition is not expected to be received on the acquisition.

**7.103 Agency-head responsibilities.**

(a) Requirements for contract actions which must be awarded by the end of the fiscal year must be submitted to the contracting office by 31 July of that fiscal year. Solicitations for requirements received after 31 July shall not be issued unless approved by the chief of the contracting office.

A contract action log shall be maintained by the contracting office for all purchases of contracted advisory and assistance services, periodicals, pamphlets, and audiovisual products. Existing logs may be used for this purpose, provided some means is devised to readily identify these types of contract actions that are highly vulnerable to waste.

(d) Written acquisition plans required by 7.102(91) may be effected on a system basis (see FAR 7.102) using a comprehensive plan for a specified period of time (i.e., quarterly, semi-annually or annually).

**7.104 General procedures.**

(b) (90) The Defense Production Act and the Defense Guidance require DoD to maintain an adequate production base to promote national security. In this regard, industrial preparedness planning is conducted to ensure that the industrial base is adequate to offset war reserves and provide combat support in emergencies. When an item is being considered as an item of supply from a new source, an industrial base analysis for the item should be accomplished or updated. This is particularly important when the item will be supplied by a single source, as well as when it is an Industrial Preparedness Planning item either for war reserve shortfall or based upon past production history; a weapon system item coded essentially codes 1 and 5; or an item supporting a Commanders in Chief Critical Item List (CINC CIL) item. For these types of items, adequate capacity is necessary to meet surge and emergency increased demands.

(b) (91) Measures to protect and enhance the production base readiness must be taken any time the procurement support method changes (e.g., such as conversion from individual purchases to prime vendor or corporate contract type arrangements), regardless of the type of concern that will provide the item.

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**PART 11**  
**DESCRIBING AGENCY NEEDS**

**11.002 Policy.**

(a) (1) (ii) (90) Agencies are responsible for determining their requirements and the best strategy for meeting those requirements. An agency's requirement is not overly restrictive of competition as long as the agency can show that its decisions are --

(A) Based on actual experience, engineering analysis, or similar rational bases; and

(B) Rationally related to ensuring its legitimate requirements will be met.

(91) To ensure that the Government's needs are met in the most effective manner, agencies must define their requirements in terms that --

(A) Take optimum advantage of distribution and support options, methods for assuring reliability, and other capabilities available in the marketplace that the agency determines appropriate for the type of item or service being acquired; and

(B) Exclude those items or services that cannot meet the agency's legitimate requirements.

**SUBPART 11.1 - SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS**

**11.103 Market acceptance.**

(a) Approval authority for requiring offerors to demonstrate market acceptance pursuant to FAR 11.103(a) is delegated to the contracting officer.

(90) A market acceptance requirement is a requirement that an item must have performed in a certain way in a specified environment that approximates or reasonably relates to the agency's intended application. The use of market acceptance criteria is consistent with the definition of full and open competition in FAR Part 6 as it relates to agency needs. A market acceptance requirement may be used to establish either --

(i) A minimum threshold or performance that will be considered a demonstration that the item has been adequately market-tested or field-proven; or

(ii) An evaluation method that awards partial credit for items that meet part of the requirement.

(b) (90) Market research provides the information from which it can be determined whether previously-developed items exist that can meet the agency's needs and what methods are used in that marketplace to assure reliability. Then it must be shown, through a careful analysis of the intended application and the marketplace capabilities available, that the optimum strategy for meeting the Government's needs is to require items that have been field-proven in specified ways.

(b) (91) When an agency requires that an item must have achieved market acceptance, the agency must specify exactly what that means in the context of the particular acquisition. The meaning will vary widely, depending upon what benefit the agency is attempting to gain by using such a strategy.

(b) (92) When an agency's primary goal is to acquire the latest technology, other methods of assuring reliability are more appropriate than market acceptance. Particularly when acquiring items in a rapidly evolving technological field over a long-term contract, an agency will not be able to demonstrate that an item that is currently field-proven would be the best item for meeting the agency's needs several years from now.

(e) The preparing activity will maintain documentation that describes the technical aspects of the item and supports the market acceptance requirement.

(1) Some examples of the type of rationale that could support requiring a market-tested item include:

(90) Minimize design and engineering risk;

(91) Eliminate costly and time-consuming field-testing and debugging of complex items;

## PART 13

## SIMPLIFIED ACQUISITION PROCEDURES

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PART 13

SIMPLIFIED ACQUISITION PROCEDURES

SUBPART 13.1 - GENERAL

\* \* \* \* \*

13.106 Competition and price reasonableness.

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13.106-2 Purchases exceeding the micro-purchase threshold.

(b)(1) The procedural flexibilities described at FAR 13.106-2(b)(1) are intended to be illustrative, not all inclusive. For example, if discussions are necessary with an offeror, contracting officers are authorized to hold discussions with one or more offerors, but need not conduct discussions with all offerors in the competitive range if such discussions are unnecessary and the procedures for these discussions are fair and equitable to all offerors.

(d) The term "solicitation" includes "request for quotations" or "request for proposals" (see FAR Subparts 13.1 and 15.4).

13.106-90 Simplified Acquisition Price Review Program. See 90.12.

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SUBPART 13.6 - TEST PROGRAM FOR CERTAIN COMMERCIAL ITEMS

13.601 General.

(a)(90) Circumstances when the contracting officer may reasonably expect that quotes or offers will include only commercial items include, but are not limited to, the following:

- (1) No sources of items other than commercial items are known to exist; or
- (2) Sources of items other than commercial items are known to exist but are not expected to offer.

If the contracting officer reasonably expected that quotes or offers would only include commercial items but receives one or more offers of other than commercial items, the contracting officer may proceed with the acquisition under the procedures in Subpart 13.6.

(91) Contracting officers are authorized to issue purchase orders and blanket purchase agreement (BPA) calls (see FAR 13.204(b)) in amounts greater than the simplified acquisition threshold but not exceeding \$5,000,000 when the contracting officer determines, after the synopsis of the requirement, and after the evaluation of all offers or quotes in response to the synopsis, that the purchase order or BPA call is the appropriate contract vehicle. Each DLA contracting office may establish appropriate guidelines, based on the nature of the commodities it is responsible for acquiring, as to when a request for proposals may be more appropriate than a request for quotations, and may issue other guidance it determines necessary to protect the Government's interest (e.g., identifying circumstances when use of a bilateral purchase order should be considered). Each DLA contracting office shall retain BPA call limitations it determines appropriate to its automated systems and that are consistent with both the nature of the items it is responsible for acquiring and the historical pricing practices of its suppliers.

(92) Some procedures in Part 13 are expressly limited to the simplified acquisition threshold or some lower threshold, or their use is expressly superseded by a reference to differing procedures in FAR Subpart 13.6. Examples of Part 13 procedures that would not be authorized for use when conducting an acquisition under Subpart 13.6 include:

- (i) Micro-purchase procedures (FAR 13.106-1);
- (ii) Simplified justification procedure for sole source buys (FAR 13.106-2(a)(5) and 13.106-2(d)(3));
- (iii) Fast payment procedures (FAR Subpart 13.3); and
- (iv) Imprint fund procedures (FAR Subpart 13.4).

(c) Unless Part 12 expressly provides otherwise, procedures required in other FAR parts still apply to acquisitions of commercial items, including those conducted under Subpart 13.6. Some examples include the requirements to:

- (1) Synopsise proposed contract actions expected to exceed \$25,000 in the Commerce Business Daily (CBD) (FAR 5.101(a)(1));
- (2) Announce contract awards valued over \$3,000,000 (FAR 5.303(a)); and
- (3) Obtain preaward clearances for contracts and subcontracts valued at \$1,000,000 or more (FAR 22.805).

Agency and/or local requirements for review under specified circumstances also still apply, unless explicitly waived. Additionally, if an exemption applies only to acquisitions that are not expected to exceed the simplified acquisition threshold, such an exemption is not applicable when using Subpart 13.6. One example of an exception that does not apply under Subpart 13.6 is the exception from the synopsis requirement when the contract action is expected to exceed \$25,000 but not expected to exceed the simplified acquisition threshold and will be made through FACNET. Another example is the new coverage at DLAD 7.102(91), which has been revised to require written acquisition plans for all proposed contract actions other than "those not expected to exceed the simplified acquisition threshold," instead of "those effected under FAR Part 13."

(90) Acquisitions under Subpart 13.6 cannot be conducted in the same manner as those that were formerly called "small purchases," which did not exceed \$25,000 and therefore were never subject to synopsis requirements. Synopsis requirements are not waived for acquisitions conducted under Part 13 (including Subpart 13.6), and all quotations or offers must be considered (see FAR 5.101(a)(1) and 13.106-2(b)(1)). Therefore, acquisitions conducted under the authority of Subpart 13.6 are comparable to simplified acquisitions between \$25,000 and \$100,000, which also

require synopsis.

13.602 Special documentation requirements.

(a) If an acquisition is conducted under circumstances that would be considered "other than full and open" if Part 6 applied but is not conducted on a "sole source" basis, no justification and approval (J&A) is required. For example, if the exception for urgency applies but more than one source is solicited, no J&A is required. This is a different standard from the standard in FAR and DLAD Part 6, where any circumstance that is other than full and open requires a J&A. Acquisitions of commercial items described only by a single manufacturer's name and part number are sole source acquisitions and do require a J&A pursuant to FAR Subpart 13.6. When multiple manufacturers and part numbers are identified in the purchase description, the acquisition is not sole source, and no J&A is required.